BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI.

Section 75.

In order to save the time of this court. we will make this brief short and concise. We shall briefly discuss Section 75(s) which gives to a farmer-debtor the benefit of the Bankruptcy Act. This Act was passed for the benefit and protection of the farmers of this nation. It provides an orderly manner of liquidating a farmer-debtor's indebtedness and giving him a new start in life. Obviously, that purpose cannot be accomplished if courts permit Federal agencies, the respondents, to continually harass the farmer-debtors with reviews and red tape and endless litigation. That purpose cannot be accomplished by arbitrary and unjust overvaluation.

The question before this court is the question of the method of determining "the fair and reasonable market value" of petitioner's farm. Congress provided the procedure. We quote from the first paragraph of 75(s) "The referee, * * * shall appoint appraisers * * *. Such appraisers shall appraise all of the property of the debtor, * * * at its then fair and reasonable market value. * * * Provided, That in proceedings under this section either party may file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal."

Then, in order to protect both the farmer-debtor and his creditors from an *increase* or *decrease* in the value of the farm, Congress provided in paragraph 75(s)(3) that "At the end of three years, or prior thereto, the debtor may pay into court the *amount of the appraisal* of the property of

which he retains possession * * * less the amount paid on principal: Provided, That upon request * * * the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, *and after such hearing fix the value of the property,* in accordance with the evidence submitted, *and the debtor shall then pay the value so arrived at* into court less payments made on the principal * * *." The court will note that *there is no provision for review or appeal* from this reappraisal or revaluation. It is *final* unless fraudulent, mistaken, or contrary to the great weight of evidence.

If all the Federal Courts would only follow this procedure without prejudice or bias, if they would only realize that the insolvent farmer-debtor, under Section 75, has the same rights as insolvent corporations have under the Reorganization Section, then, there would be less litigation, and both the nation and the courts would be the gainers. Unfortunately, however, some of these courts persist in giving Section 75 a strict construction against the farmer-debtor.

These courts forget that Section 75 is a *remedial statute —that it must be liberally construed to accomplish its purpose.* They forget that farmer-debtors under Section 75 are financial wrecks. That Section 75 is a proceeding in bankruptcy—a proceeding to salvage and rehabilitate. It is no longer a question of profits and 100% returns. *It is a question of salvaging without unnecessarily wrecking homes.*

Decision of the Circuit Court Contradictory.

In the very first paragraph, the court says "that where a conciliation commissioner has held a 'hearing', pursuant to subsection s(3), and has fixed the value of the farmer-debtor's property, for redemption purposes, 'in accordance with the evidence submitted', the district judge, on petition

for review, *does not have the right to try the question of value de novo on the record, merely because he disagrees with the conciliation commissioner on the weight to which the conflicting, but substantial, competent and credible, evidence of the witnesses is entitled*" (R. 108). That is a correct statement of the law. General Orders 12, 47 and 50.

But, immediately after that, the Circuit Court goes out of its way to find some reason to sustain the District Judge's erroneous decision. A decision in which he erroneously set aside the conciliation commissioner's valuation of $2000, and raised it to $4000 in violation of Section 75(s)(3) and General Orders 47 and 50.

Again the Circuit Court says "In the appeal now before us, the farmer-debtor contends that the district judge ignored this principle, substituted his own judgment on witness-credibility for that of the conciliation commissioner, and unwarrantedly increased the redemption value of the farmer-debtor's land from the sum of $2,000, fixed by the commissioner, to the sum of $4,000, and that his order therefore should be reversed.

"*Some of the findings and conclusions of the district judge, in relation to the evidence, tend to support appellant's contention* and to approach the situation in Dunsdon *v.* Federal Land Bank of St. Paul (8 Cir.) 137 F. (2d) 84" (R. 108 and 109).

Then, the Circuit Court goes *beyond any issue raised by petitioner's assignments of error.* (R. 102 and 103). *It goes beyond any issue presented in brief or argument.* In fact, it ignores the District Judge's inaccurate findings of fact and conclusions of law (R. 92 to 98 inclusive). It finds a reason of its own somewhere in the record in order to sustain the District Judge's decision, which reason is far fetched and not warranted by anything in the record.

In its opinion the Circuit Court states "But a reading of the entire record indicates that there was a ground on which the proceedings and order of the conciliation commissioner were required to be held 'clearly erroneous', and the district judge was under the circumstances authorized to make a determination of the value of the land on a proper legal basis.

"The conciliation commissioner's order recited that the value of $2,000 fixed by him was arrived at, 'after considering the evidence as to values of said real property offered and received at said hearing, *and taking judicial cognizance of all the files and records in this case.*' (Emphasis added.) The appraisal report has been incorporated in the record here, as being one of the filings of which the conciliation commissioner purported to take judicial notice in reaching his decision. The value fixed by the commissioner was the identical figure of the appraisal report" (R. 109).

We submit that the Circuit Court put an unwarranted construction, and drew an unwarranted inference from the language used by the conciliation commissioner, which more fully quoted, reads, "*and after considering the evidence as to values of said real property offered and received at said hearing, and taking judicial cognizance of all the files and records in this case, now makes the following order fixing values of said real property in this proceeding, viz.,*"

Of course, the conciliation commissioner took judicial notice that he was presiding at a hearing in a bankruptcy proceeding under Section 75(s). He perhaps took judicial notice that $2000 had been deposited by petitioner to redeem. He perhaps took judicial notice also that $2000 was the amount of the appraisal. He would have been dumb indeed if he did not know that. There is nothing in the law that requires a conciliation commissioner's mind to become a blank.

But, there is *nothing* in the record that shows that he *attempted* to sustain the appraisal, or that he even *gave* it a *passing* consideration. He was there to observe the witnesses, receive their testimony and *consider* the evidence as to value of said real property offered and received at said hearing. That is in substance his own language. *Surely* the Circuit Court was *not justified* in entering the field of speculation to the extent that it attempts to in order to sustain an erroneous decisoin of the District Court —a court whose findings of fact and conclusions of law it not only refused to accept, but, ignored.

The court refers to the *Rait* vs. *Federal Land Bank of St. Paul* case, 135 F. (2d) 447. (R. 109). That case is not in point. In that case the conciliation commissioner said he knew of his own knowledge that the appraisal was too high. In other words, he was basing the value not upon evidence, nor even upon judicial notice, but, upon his own knowledge. There is nothing of that kind in the record of the instant case.

The Correct Rule.

The rule is that where a referee fixes value after personally hearing and observing witnesses who orally testified before him, a reviewing court will not retry the matter and reach an independent conclusion. It follows that the conciliation commissioner's valuation *cannot be disturbed* by the District Judge *unless* it is contrary to the great weight of evidence, or where there is fraud or a miscarriage of justice. *We call attention to the fact that Section 75(s) (3) does not authorize a review or appeal from the revaluation.* We repeat that the revaluation is final unless contrary to the great weight of evidence, or in case of fraud or a miscarriage of justice. General Orders 47 and 50.

Cases Supporting Petitioner.

In *Equitable* v. *Carmody,* (CCA 8), 131 Fed. (2d) 318, the court had before it a case remarkably similar to the one at bar. There the farmer-debtor tendered the appraised value of $110 per acre whereupon, as here, the mortgage holder asked for a revaluation. After a hearing the conciliation commissioner found the value to be $110 per acre. Five real estate salesmen testified for the mortgage holder that the land was worth $135 or $140 an acre. Five neighboring farmers on behalf of the farmer debtor testified it was worth $100 to $110.

Upon appeal the court in affirming the district court said:

"The question of market value in the present case was a pure fact issue, *which, as we have indicated above, the conciliation commissioner was entitled to determine,* not merely from the value estimates of the experts, but from an evaluation or appraisal of all the competent elements developed in the testimony of the opposing witnesses, *in the light of the common knowledge and experience of the community on such a general matter.* The evidence in the record is substantial and conflicting, on the part of witnesses generally qualified to testify as to the facts of the various value elements involved, and, in such a situation, where the question undoubtedly is of credibility, weight and judgment, the conciliation commissioner's finding as to value, in a proceeding of this nature, *should ordinarily be controlling.*" See also *Burnett* v. *Central,* (CCA 8), 125 Fed. 836 and *Newman* v. *Burnham,* 126 Fed. (2nd) 336.

In *Rasmussen* v. *Gresley,* (CCA 8), 77 Fed. (2d) 252, the court said "The determination of a referee in bankruptcy of issues of fact based upon the evidence of witnesses appearing in person before him, where such determination must rest upon the credibility of the witnesses and the

weight of their evidence, *should ordinarily be accepted upon review,* except in those cases where it is obvious that the referee has made a mistake. (Citing cases). A different rule would virtually make a review of the findings of a referee as to issues of fact *which depended for their correctness upon the credibility of witnesses who had personally appeared before him and upon the weight of their evidence, a trial de novo.*"

In *Dunsdon* v. *Federal,* 137 Fed. (2d) 84, the court states "In a proceeding of the character here involved, where there has been only a review of the previous record and no additional evidence has been received, *the law clearly does not contemplate that a finding of a conciliation commissioner shall be set aside by a district judge on a mere difference in personal judgment as to the crediting of the record evidence.*"

In *Federal Land Bank* v. *Castanien,* (CCA 6), 116 Fed. (2) 588, under Section 75(s) (3), upon motion of the mortgage holder, after hearing and with the consent of the farmer-debtor a conciliation commissioner terminated the stay and ordered liquidation. The mortgage holder filed a petition for review which the judge denied. The mortgage holder appealed, there being no opposition at any stage, and the appellate court affirmed, holding the conciliation commissioner's order was final. There is no controversy over this decision.

Pfister v. *Northern Illinois,* 317 U. S. 144, 63 S. Ct. 133; 87 L. Ed. 123. (1) The subject of valuation was not in issue. (2) It held that Section 75 provides for appeal only from the first appraisal, not the second. (3) It held that the original orders of the conciliation commissioner might not be interfered with. *The three aspects of the decision lend no countenance to a retrial or change of the fact question of value as found by the conciliation commissioner who heard all of the witnesses personally.*

The principle set forth in the above decisions is so well established by numerous decisions that a further citation of cases would simply be a waste of this court's time.

Respondents' Petition Insufficient.

It is well settled by numerous decisions that a petition for review must specifically set forth facts justifying a review. It must point out wherein the conciliation commissioner's findings were contrary to the evidence, or contrary to the great weight of evidence, or that there was fraud or a mistake, or that there was a miscarriage of justice.

In the case at bar the only reason for asking a review is in these words: "*That said order of the Supervising Conciliation Commissioner dated June 16, 1942, errs in that the value so fixed is not the present fair and reasonable market value according to the evidence submitted at said hearing.*" We submit that that is insufficient.

"It is settled law that exceptions to the Report of a Master *should point out specifically the errors* upon which the party relies, not only that the opposite party may be apprised of what he has to meet, but that the Master may know in what particular his Report is objectionable and may have an opportunity to correct his errors or reconsider his opinions; and, also, because the main object of such a reference being to lighten the Court's labors, the Court should not be obliged to rehear the whole case on the evidence when the Report is made. * * *

"But, the District Judge should not disturb the findings of fact of a Referee in Bankruptcy, *unless there is most cogent evidence of mistake and miscarriage of justice.*" *Kowalaky* v. *American Employer's Ins. Co.* 90 F. (2d) 476.

"Exceptions to findings of fact by a master should not be to the general result, *but must be specific, and point*

out the particular errors relied on, and where they are based on particular evidence should refer to the place in the record where the same may be found." *Fordyce* v. *Railway Companies, et al.,* (C. C. A.) 145 F. 544. 6 Am. Juris. 566.

This matter has been before the bankrupt courts on several occasions and the Courts have held repeatedly that a Petition for Review is defective where the Specifications of Error are set forth in general terms only and do not show the reason why it is contended that alleged errors have been committed. You will find these propositions set forth in: In re. Casoudounceq, 46 Fed. Sup. 718. In re. Charles Stone Florsheim, Bankrupt, 24 Fed. Sup. 991.

Other courts have said that an assignment of error which merely contends that the verdict is wholly unsupported by the evidence is insufficient and "*presents nothing for consideration of an Appellate Court.*" *Hecht* v. *Alfaro,* 10 Fed. (2d) 464.

In *Virginia Railway Company* v. *Chambers,* 4th Circuit 46 Fed. (2d) 20, the court makes the statement that the court cannot undertake to sift the evidence and discover the error simply *because the plaintiff alleges error in general terms.*

In the same case the court points out that "where an assignment that a particular finding is not sustained by the evidence is made, without stating the substance of the evidence, and showing how it fails to support the findings, the assignment is insufficient."

Such assignments as "the evidence is insufficient to justify the verdict herein," or "the verdict is contrary to the instructions of the Court and against the law," or that "the Court erred in permitting the Judgment," *were all declared to be too general to be reviewed.* See also *In re. Humphrey's Gold Corporation* v. *Lewis,* 90 Fed. (2d) 896.

Conclusions of Law Biased.

We have stated that the Circuit Court paid no attention, and did not accept the conclusions of law of the lower court. In reading those conclusions, and the entire record, one cannot help but come to the conclusion that the district judge was unconsciously biased. *His conclusions of law are not only erroneous, but, they are inaccurate. Most of them have no foundation in fact or in anything in the record.*

In his conclusion No. 1, R. 97, the district judge says "The Order of the Supervising Conciliation Commissioner is clearly erroneous in entirely disregarding the testimony of well qualified witnesses, for whose testimony there is excellent foundation."

There is nothing in the record that would support such a conclusion. There is nothing in the testimony that would warrant it. There is nothing in the conciliation commissioner's findings that would support such a conclusion. Is it possible that the judge feels that the respondents' employed witnesses' testimony is beyond question, and that it is clearly erroneous for the conciliation commissioner to consider, weigh and balance it with the testimony of petitioner's witnesses?

Again in finding No. 2, R. 97 and 98, the district judge says: "The Order of the Supervising Conciliation Commissioner is clearly erroneous in disregarding such pertinent factors as actual bona fide sales in the neighborhood, qualified in time and distance; the assessed valuation of the land, the insurance obtainable upon the buildings, and the values admittedly placed thereon by its owner, the bankrupt herein, when purchasing the same, securing loans upon it, and both in a prior proceeding and in this proceeding."

Again we say there is nothing in the record that would warrant any such conclusions of law. There is nothing in

the conciliation commissioner's report that would warrant the statement that he "disregarded pertinent facts." There is nothing in the testimony that would support such a conclusion. However, the judge is in error. Assessed valuation is not a test of value, and is not considered even competent evidence in many courts and States. Insurance obtainable likewise is not admissible unless made so by state law, and the value placed upon it by the owner is admissible only if made within recent time and under similar conditions. It is not admissible after ten years of drought.

The question in this case is the valuation in a bankruptcy proceeding as determined under the procedure laid down by Section 75(s)(3). The question is what was "the then and present value?" It is not what somebody thought it was or what it was insured for or what it was purchased for or what the amount of the loan was. This is a case of bankruptcy and rehabilitation.

In finding No. 3 the District Judge makes the further surprising statement that "The Order of the Supervising Conciliation Commissioner is clearly erroneous wherein the same is based upon opinion testimony of witnesses not qualified to express opinion, which rested upon an inadequate foundation both as to the basis and extent of inspection and appraisal."

Again there is nothing in the record that would justify any such a conclusion, unless it be that the judge thinks it is improper for a farmer to testify to the value of his own property, or for his neighbor, living in the same or adjoining county and locality, to testify to the value of property they are familiar with. Courts universally have held that persons familiar with and living in the community, and engaged in the same business, are competent to testify, and that their testimony is superior to that of expert witnesses and appraisers who have seen the property only

nce or twice as was the case with respondents' witnesses, arson and Adams.

Conclusion.

In conclusion, petitioner feels that the decisions below all for the exercise of the supervision of this court. They onflict with the statute. They conflict with the decisions f other circuit courts and district courts. They conflict ith previous decisions of the same circuit.

Wherefore, in order to clarify and clear up confusion n the procedure and administration of a remedial statute, nd in order to lessen prolonged and needless litigation n the administration of justice, petitioner prays that this ourt issue a writ of certiorari to the appellate court.

Respectfully submitted,

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